CAC Services, Inc. ***and*** **International Brotherhood of Teamsters, Local 710, AFL–CIO.** Case 13–CA–40139–1

April 25, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND ACOSTA

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union in Case 13–CA–40139–1 on April 23, 2002 and August 22, 2002, respectively, the General Counsel issued a complaint on August 29, 2002, and an amendment to the complaint on September 4, 2002, against the Respondent alleging that it violated Section 8(a)(1) and (3) of the Act. Although properly served copies of the charges, the complaint, and the amendment to the complaint, the Respondent has failed to file a timely answer.

On November 22, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On December 3, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On December 23, 2002, the Respondent filed with the Board a response to the Notice to Show Cause and included an answer to the complaint.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 29, 2002, notified the Respondent that unless an answer was received by November 8, 2002, a Motion for Summary Judgment would be filed. Despite having been advised that it was required to file an answer to the complaint by the specified dates, the Respondent did not do so until a month after the General Counsel filed the Motion for Summary Judgment.

In its response to the Notice to Show Cause, the Respondent argues that it has gone through a recent transition, including a change in personnel, so that the documents sent to the Respondent did not reach the proper personnel for referral to legal counsel. The Respondent also asserts that its human resources representative, who was the person most familiar with the issues alleged in the complaint, no longer works for the Respondent. The Respondent attaches to its response an August 26, 2002 letter that it sent to the General Counsel. In that letter, the Respondent stated that the alleged statements made by its employees that resulted in the charges were not true. Finally, as noted, the Respondent has now filed an answer to the complaint.

We disagree with the Respondent's implicit argument that good cause has been demonstrated for its failure to file a timely answer, and we grant the General Counsel's Motion for Summary Judgment. Regarding the Respondent's assertion that a recent transition in its business prevented its counsel from receiving the notice of charges or the complaint, it is well settled that changes in personnel and "preoccup[ation with other aspects of [the] business" do not constitute good cause for a party's failure to file a timely answer. *Dong-A Daily North America*, 332 NLRB 15 (2000) citing *Lee & Sons Tree Service*, 282 NLRB (905) (1987) ("major turmoil" and departure of key employees are not sufficient to establish good cause). See also *Windward Roofing & Construction Co.*, 333 NLRB 659 (2001).

Moreover, the Respondent's August 26, 2002 letter does not constitute a timely answer. It is a well established general rule that statements of position submitted during the postcharge, pre-complaint investigative stage are insufficient to constitute answers to complaints. See *Associated Supermarket*, 338 NLRB No. 104, slip op. at 2 fn. 5 (2003); *Unlimited Security, Inc.*, 338 NLRB No. 58, slip op. at 1 (2002). See also *Central States Xpress*, 324 NLRB 442, 444 (1997) (stating that statements of position in response to charges, "by their nature and their limited preliminary role, are rarely sufficient . . . to stand in the place of answers to complaints").

Finally, we note that the Respondent does not dispute receipt of the complaint, the amendment to the complaint, or the reminder letter. Thus, the Respondent clearly had notice of the charges. In view of the alleged transition and its inability to contact legal counsel about the complaint, the Respondent could have requested an extension of time. Its failure to do so is another factor showing lack of good cause. *Day & Zimmerman Services*, 325 NLRB 1046, 1047 (1998).

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation, with offices and places of business in Chicago Heights, Illinois (the facilities), has been engaged in the business of car hauling. During the calendar year preceding issuance of the complaint, the Respondent, in conducting its business operations described above, sold and shipped from its facilities products, goods, and materials valued in excess of $50,000 directly to points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the following positions and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Fred Carter–President and CEO
Green L. Davis–Vice-President of Operations
Will Long–Manager of Operations
Dartanyan Morgan–Director of Safety/Quality

At all material times, Dwain Speese has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about April 8, 2002, the Respondent, by Dwain Speese, at one of the Respondent's facilities, threatened to sue employees if they selected the Union as their bargaining representative.

On about April 22, 2002, the Respondent, by Will Long, at one of the Respondent's facilities, interrogated employees regarding employees' union activities.

On about April 22, 2002, the Respondent, by Green L. Davis, at one of the Respondent's facilities, created the impression that the union activities of employees were under surveillance.

On about April 24, 2002, the Respondent, by Green L. Davis and Dartanyan Morgan, at one of the Respondent's facilities, threatened to discharge employees if they selected the Union as their bargaining representative.

On about April 22, 2002, the Respondent terminated and has since failed to reinstate its employees Sidney Manning, Lemuel McLaurin, and Manuel Smith.

The Respondent engaged in the conduct described above because Sidney Manning, Lemuel McLaurin, and Manuel Smith joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By threatening to sue employees if they selected the Union as their bargaining representative, interrogating employees regarding their union activities, creating the impression that the employees' union activities were under surveillance, and threatening to discharge employees if they selected the Union as their bargaining representative, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By discharging Sidney Manning, Lemuel McLaurin, and Manuel Smith for joining and assisting the Union and for engaging in concerted activities and in order to discourage employees from engaging in those activities, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging and failing to reinstate employees Sidney Manning, Lemuel McLaurin, and Manuel Smith, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. We shall also order the Respondent to make Sidney Manning, Lemuel McLaurin, and Manuel Smith whole for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with backpay to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, we shall require the Respondent to remove from its files any references to the unlawful terminations and refusal to reinstate, and to notify the three employees in writing that this has been done and that the terminations will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, CAC Services, Inc., Chicago Heights, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to sue employees if they selected the Union as their bargaining representative.

(b) Interrogating employees about their union activities.

(c) Creating the impression that the employees' union activities are under surveillance.

(d) Threatening to discharge employees if they select the Union as their bargaining representative.

(e) Terminating and refusing to reinstate employees because they join and assist the Union and engaged in concerted activities and to discourage employees from engaging in those activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(2) Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Sidney Manning, Lemuel McLaurin, and Manuel Smith full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make whole Sidney Manning, Lemuel McLaurin, and Manuel Smith for any loss of earnings and other benefits suffered as a result of their unlawful terminations, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful terminations of Sidney Manning, Lemuel McLaurin, and Manuel Smith, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Chicago Heights, Illinois, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 8, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 25, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

R. Alexander Acosta, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT threaten to sue employees if they select the Union as their bargaining representative.

WE WILL NOT interrogate employees regarding their union activities.

WE WILL NOT create the impression that the union activities of employees are under surveillance.

WE WILL NOT threaten to discharge employees if they select a union as their bargaining representative.

WE WILL NOT terminate, refuse to reinstate, or otherwise discriminate against employees because they join and assist a union and engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's order, offer Sidney Manning, Lemuel McLaurin, and Manuel Smith reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Sidney Manning, Lemuel McLaurin, and Manuel Smith for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful terminations of Sidney Manning, Lemuel McLaurin, and Manuel Smith, and WE WILL within 3 days thereafter, notify them in writing that this has been done, and that our unlawful conduct will not be used against them in any way.

CAC SERVICES, INC.